IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 446 OF 1984.

Shri Bapusaheb Tatoba Hulle,
since deceased by legal heirs:

1. Smt.Lilawati Bapusaheb Hulle,
   Age: 64 years.
2. Smt.Seetal Bapusaheb Hulle,
   Age: 41 years.
3. Shri Nitin Bapusaheb Hulle,
   Age: 34 years.
   All R/o. "Sadhudas Niwas",
   Patil Khot & Co., Main Road,
   Sangli.
4. Sou.Sheela Raghunath Bhosake,
   Age: 48 years,
   R/o.Uchgaon, Taluka Karvir,
   Dist. Kolhapur.
5. Sou.Vandana Ajit Patil,
   Age: 37 years,
   R/o. Jaysingpur, Dist.Kolhapur. ... Appellants.

Versus.

1. Shri Baburao Devappa Hulle,
   since deceased by heris-

1A. Smt.Gangubai @ Sonabai Baburao
   Hulle, Age: 65, Occ.: Household,
   139, Vakharbhag, Sangli.

2. Sumati Adgonda Patil,
   since deceased by her heirs and
   legal representatives.

2A. Kum.Papi @ Alka Adgonda Patil,
   Occ.: Service.

2B. Shri Anil Adgonda Patil,
   Both R/o. 139, Wakharbhag,
   Sangli.
   (Registration of C.A.ST.No.
   18092/86 for bringing heirs of
   Respondent No.2 stands refused
   as per Addl.Registrar’s order
   dated 12.12.1987.

3. Shri Shridhar Baburao Hulle,
   since deceased by his heirs.

3A. Smt.Vasundhara w/o.Shridhar Hulle,
   Age: 34, Occ.: Household work,
   for herself as guardian of 3B to

3D who are minors.
3B. Sushma Shridhar Hulle,
Age: 15 years.
3C. Shri Ajit Shridhar Hulle,
Age 14 years.
3D. Shri Uday Shridhar Hulle,
Age 12 years.
All R/o. 139, Vakhar Bhag,
Sangli.

4. Bebi Kallappa Chougule,
Age 35 yrs., Occ.: Household,
R/o. Takali, Taluka Miraj,
Dist. Sangli.

5. Sou.Sushila Devendra Mallewada,
Age: 32 yrs. Occ: Household,
R/o. Malgaon, Taluka Miraj,
Dist. Sangli.

6. Sou.Shakuntala Annarao Khot,
Age: 30 yrs., Occ.: Household,
Sheth Brijlal Rungetha Garden,
Shaniwar Peth, Miraj, Dist.Sangli.

7. Shri Raosaheb Baburao Hulle,
Age: 28 yrs., Occ: Business,
R/o.139, Vakhar Bhag, Sangli.

8. Sou.Nalioni Tatyasaheb Wadkar,
Age: 26 yrs., Occ.: Household,
Water Work, Sangli. ... Respondents.

Shri Amit Sale holding for Shri T.S.Ingle for the Appellants.

Shri S.G.Page for the Respondents Nos.3(A) to 3(D) and 4 to 8.

CORAM : ABHAY S.OKA, J.

DATED : 28th November, 2007.

ORAL JUDGMENT.:

1. Heard the learned Advocates appearing for the parties. The Second Appeal is by the unsuccessful original Defendant. The legal representatives of the

Appellant are brought on record during the pendency of the Appeal. The original Plaintiff is also no more and his legal representatives are brought on record. For the sake of convenience, the parties are hereinafter referred to with reference to their status in the trial Court.

2. According to the case of the Plaintiff, he had three brothers by name Tatoba, Bhalchandra, and Bhupal. The Defendant is the son of deceased Tatoba. According to the Plaintiff, the suit property consists of two rooms on the ground floor in a house at Sangli. According to the case of the Plaintiff, the same was allotted to him in the partition amongst the Plaintiff and his brothers which was effected in the year 1964. According to the Plaintiff, the Defendant approached him in the year 1975 and requested him to grant him permission to reside in the suit premises till he acquired a suitable accommodation. It is the case of the Plaintiff that in view of close relationship, he allowed the Defendant to occupy the suit premises. As the Defendant refused to vacate, a legal notice was served to the Defendant which was replied by the Defendant by contending that he is the co-owner of the suit premises.

3. The suit was contested by the Defendant by

contending that the Defendant was a co-owner and was having 1/4th share in the suit premises. In the alternative, it was submitted that as the Defendant was occupying the suit premises as a licensee prior to 1st February 1973, he has become a tenant in respect of the suit premises by virtue of section 15A of the Bombay Rents, Hotel and Lodging House Control Act, 1947.

4. The trial Court accepted the case made out by the Plaintiff of exclusive ownership on the basis of the partition. The trial Court held that the Defendant has failed to establish that he had become the tenant of the suit premises. The trial Court proceeded to pass a decree for possession.

5. The decree passed by the trial Court has been confirmed in Appeal by the District Court. The District Court accepted the case of the Plaintiff that he was the exclusive owner of the suit premises and the Defendant was inducted as a gratuitous licensee. The plea of the Defendant of protection under section 15A of the said Act of 1947 was negatived by the Appellate Court.

6. The Second Appeal was admitted on 11th September 1984 by passing the following order:

> "Admit. Question of law is whether title

passes under an unregistered deed and whether it can be used for collateral purpose to establish title?"

7. The learned Advocate appearing for the legal representatives of the Defendant (Appellant) submitted that the document relied upon by the Plaintiff which was allegedly executed on 20th October 1964 is at the highest an unregistered deed of partition which was not admissible in evidence. He submitted that in view of the provisions of section 17 of the Indian Registration Act, 1908, the document of partition was a compulsorily registerable document and in the absence of registration, the document was not admissible in evidence as the evidence of partition. He placed reliance on the decision of the Apex Court in the case of Bhoop Singh v/s. Ram Singh Major and others ([1995] 5 SCC 709). He also placed reliance on a decision of the Apex Court in the case of Siromani v/s. Hemkumar (AIR 1968 SC 1299). He submitted that in any event, even according to the case of the Plaintiff he was in possession of the premises prior to 1st February 1973 and therefore, he is protected by section 15A of the said Act of 1947.

8. I have considered the submissions made by the learned Advocate for the Appellants. I have perused the

document dated 20th October 1964. The recitals in the document make it clear that it is merely a recording an oral partition which was already effected between the parties. The opening recital in the document is crystal clear which records that the partition was already effected. Thus the document is nothing but a memorandum of partition recording the details of the partition which was already effected. The said document is not a deed of partition which actually effects the partition. A plain reading of the opening recital and the contents of the said document clearly shows that it is merely a recording the factum of partition which is already effected by and between the parties. In view of the settled position of law, such a document does not require registration under section 17 of the said Act of 1908 as the said document by itself does not extinguish or transfer or creat any interest in the property having a value of Rs.100/- and above and it merely records the factum and details of partition which is already effected by the parties prior to the execution of the document.

9. In the case of Siromani v/s. Hemkumar (supra) the Apex Court was dealing with a deed dated 27th December 1943 which by itself effected the partition of the properties. The Apex Court was not dealing with a document which was merely a memorandum of partition

which was already effected by the parties. In the case of Bhoop Singh (supra) the Apex Court was not dealing with the issue relating to a memorandum of partition. The Apex Court was dealing with clause (vi) of sub-section (2) of section 17 and the explanation carved out to the rule contained in sub-section (1) of section 17 which applies to a compromise/consent decree or order of the Court as regards immoveable property which is the subject matter of a suit or proceedings. Therefore, both the decisions are of no help to the Appellant.

10. Apart from the said document, the Appellate Court has referred to the mutation entries made on the basis of an application dated 25th October 1964 made by the Plaintiff and his brothers for giving effect to the partition which was effected between the parties. The Appellate Court noted that the said application made by the Plaintiff and his brothers and the mutation entry made on the basis of the said application also prove the factum of partition. Therefore, the question of law which is framed will have to be answered by holding that the document in question is a memorandum of partition and not a deed of partition and therefore, the said document will not require compulsory registration.

11. There is no substantial question of law framed as regards the issue regarding the plea of tenancy.

Apart from the finding of fact recorded on this aspect by the Courts below, it must be noted here that a gratuitous licensee is not included in the definition of a licensee in the said Act of 1947 and it is not the case made out by the original Defendant that he was a licensee on payment of licence fee or charge.

12. Therefore, there is no merit in the Appeal and the same is accordingly dismissed.

13. At this stage the learned Advocate for the Appellants submitted that as per the order of this Court he is paying mesne profits at the rate of Rs.420/- per month. He states that the Appellants have complied with the said order regularly and punctually. He submitted that a longer time be granted to the Appellants to vacate the suit premises as they have been staying in the suit premises for a long time. The said prayer is opposed by the Advocate for the Respondent.

14. Considering the fact that the original suit is of the year 1978, longer time cannot be granted. However, considering the relationship between the parties, it is directed that notwithstanding the dismissal of the Appeal, the decree for possession shall not be executed till 31st August 2008 subject to the Appellants and all adult members of their family filing

usual undertaking in this Court to vacate the suit premises and to keep on paying the mesne profit. The undertaking shall be filed within a period of eight weeks from today. If undertaking is not filed within the period of eight weeks, on expiry of the period of eight weeks the decree will become executable.

Judge.